

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

RICO JENNINGS WADDELL,

CV. 04-951-KI

Plaintiff,

ORDER

v.

DEPUTY JAMES, et al.,

Defendants.

KING, Judge

Plaintiff brings this civil rights action alleging that he was assaulted by Deputy Sheriffs James and Neely while he was confined at the Multnomah County Inverness Jail.

Defendants move to dismiss pursuant to Fed. R. Civ. P. 41(b), on the basis that plaintiff failed to appear at his properly noticed deposition. In support of the motion, Assistant County Attorney Scott Erik attest that plaintiff has not called or contacted him regarding this case. In the alternative to dismissal, defendants seek sanctions in the amount of \$40.00 to cover the cost of the court reporter.

Plaintiff has filed an opposition to dismissal wherein he states that he did not appear at his deposition because he was out of the state. He also states that he subsequently contacted County Attorney Agnes Sowle to reschedule his deposition.

Plaintiff has offered no acceptable justification for failing to appear at his deposition. However, because plaintiff is proceeding *pro se* and *in forma pauperis*, I decline to dismiss this action for failure to prosecute or to impose sanctions. Plaintiff is advised, however, that if he again fails to attend a properly noticed deposition, sanctions shall be imposed and this proceeding shall be dismissed.

CONCLUSION

Based on the foregoing, defendants' motion to dismiss and, in the alternative, for sanctions (#15) is DENIED. IT IS FURTHER ORDERED that the deadline to complete discovery and file dispositive motions is EXTENDED to May 30, 2005.

IT IS SO ORDERED.

DATED this 28th day of April, 2005.

/s/ Garr M. King
Garr M. King
United States District Judge